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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,844	08/22/2003	Michael R. Duff	31735/70009 CON	8141
23643 7590 06/13/2007 BARNES & THORNBURG LLP 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			EXAMINER GHALI, ISIS A D	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 06/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/645,844	Applicant(s) DUFF ET AL.	
	Examiner Isis A. Ghali	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The election/restriction requirement mailed 04/16/2004 has been withdrawn.

Claims 41-50 are pending and included in the prosecution.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 1038 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

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3. Claims 41-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furman US 5,451,404('404) in view of JP 06-157327 ('327) and the article "Differences in human evoked potentials related to olfactory or trigeminal chemosensory activation" by Hummel et al.

Furman teaches a coolant composition comprising ketal, menthol and carboxamides, or combination thereof (stimulating organic substances), incorporated into carrier and are suitable for applying or exposure to the skin and/or mucosal membrane in topical compositions that included cleansing tissues i.e. towelette, impregnated with the composition (abstract; col.2, lines 25-51; col.4, lines 38 till col.5, line 45; col.5, lines 60-61; col.6, lines 11-13). The composition is suitable for medical or other reasons and produces the cooling effect when contacts the mucosa or nose or throat by direct or indirect application or inhalation (col.6, lines 1-20). According to the applicants disclosure in page 10, lines 1-8, the stimulating organic substances are the substances that cause a sensation as a result of other sensory mechanism, for example a topical cooling sensation or olfactory sensation, these substances can be utilized as long as the sensation cause a decrease in the drowsiness of the individual.

However, the reference does not explicitly teach such substances reduces drowsiness and does not teach ammonia in the composition.

JP '327 teaches external agent for preventing drowsiness and meanwhile giving excellent feeling in use and having prolonged activity. The external agent comprises menthol and camphor (abstract).

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Hummel et al. teaches that ammonia provides nerve stimulation at large amplitude (see the provided abstract).

Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to deliver tissue impregnated with a stimulating organic substance including menthol or camphor as disclosed by Furman, and use the impregnated tissue to decrease drowsiness as disclosed by JP '327 because JP '327 teaches that menthol and camphor used externally for preventing drowsiness and meanwhile giving excellent feeling in use and having prolonged activity, and one having ordinary skill in the art would have further added ammonia taught by Hummel et al. to the impregnating composition because Hummel teaches ammonia as being able to provide nerve stimulation of large amplitude, with reasonable expectation of having a tissue impregnated with one of ketal, menthol or camphor, and further comprising ammonia that provide nerve stimulation of large amplitude and decrease drowsiness for prolonged time, and meanwhile having excellent feeling on use on the skin.

Response to Arguments

4. Applicant's arguments with respect to claim 43 have been considered but are moot in view of the new ground(s) of rejection.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 7:00 to 5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Isis A Ghali
Primary Examiner
Art Unit 1615

IG



ISIS GHALI
PRIMARY EXAMINER